

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

Creation of a Low Power Radio Service

MM Docket No. 99-25

To: Office of the Secretary – The Commission

COMMENTS OF OAK RIDGE FM, INC.

Oak Ridge FM, Inc., licensee of WNOX(FM), Oak Ridge, Tennessee (“WNOX”), by counsel, and pursuant to the Commission’s announcement of April 7, 2008 as the deadline for comments on the Commission’s Second Further Notice of Proposed Rulemaking, *Creation of A Low Power Radio Service*, MM Docket No. 99-25, Third Report & Order and Second Further Notice of Proposed Rulemaking, FCC 07-204 (rel. Dec. 11, 2007) (“*Second Further Notice*”), hereby respectfully submits its comments for consideration by the Commission.

1. The questions presented by the Commission in its *Second Further Notice* appear focused on the relief that should be made available to an operator of low power FM stations as to a subsequently filed full-service FM station application that first introduces a short spacing problem for the LPFM operator. The request for comment also asks generally whether the Commission should codify its interim processing policy waiving spacing requirements for secondary service LPFM operators as to such full-service applicants that presumably chose to create the short spacing situation by filing their applications.

2. WNOX has been serving its community of license and surrounding areas on its existing channel and from its existing transmitter site since 1974. It was unaware of the details of this proceeding until about a month ago, when the Commission sent it an Order to Show

Cause why its license should not be modified to accept an LPFM operating on a second adjacent channel from within its principal community contour. Upon investigation, WNOX learned that a recently authorized full-service FM station for Oliver Springs, Tennessee was about to displace the LPFM, although it would not be required to accept any short spacing relative to the previously authorized LPFM station. Indeed it appears that this “encroaching” full-service FM station would not have to even participate in resolving interference complaints likely to result from WNOX’s listeners.

3. The Commission’s *Third Report and Order* in MM Docket 99-25, FCC 07-204 (released December 11, 2007), 73 Fed. Reg. 3202 (the “*Third R&O*”) that accompanied the *Second Further Notice* revised complaint procedures to be followed by an LPFM station and a subsequently authorized full-service FM station by removing applicants for a second (or third) adjacent channel full-service FM station from the protection afforded co-channel, first-adjacent channel and intermediate frequency (IF) channel stations against interference within the “encroaching” full-service station’s principal community (3.16 mV/m or 70 dBu contour). It also set forth in general terms a “waiver standard” for LPFM stations in situations where implementation of the full-service new or modified FM station would result in a second adjacent channel short-spacing between the LPFM and the encroaching full-service station. Whatever the merits of the “rights” of existing LPFM operators versus subsequently filed full-service applications, the Commission should not extend its “waiver standard” to existing full-service licensees.

4. If the Commission actually intends to eliminate its spacing requirements so as to grant even temporary priority to LPFM stations over existing full-service stations that have played no role in causing the basis for the displacement of the secondary service, WNOX

respectfully submits that such an unprecedented action would violate the due process rights of licensees such as Oak Ridge FM, Inc. as well as the public interest rights of their listening audiences. LPFM operators must be held to know that operation of a low power FM is subject to displacement and that such service is secondary to full-service FM.

5. WNOX believes the action proposed by the Commission in the *Second Further Notice* goes above and beyond even the “shift in well-established policy” criticized by Commissioners Tate and McDowell in their separate statements accompanying the release of the *Third R&O*. It is unfortunate when any licensee of a secondary service such as a translator or LPFM must yield to full-service applications. It is unfair and procedurally questionable to suddenly grant primary status to a secondary service. It is a violation of fundamental due process when a long standing, full-service licensee is forced to accept interference from a subsequently authorized, secondary service.

6. This sudden status of super-priority for low power FM stations over existing full-service stations runs counter to an entire generation of protection priorities in the broadcast service. In the Commission’s *Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 99-25, 20 FCC Rcd 6763 (2005) (“*Second Order*”), the Commission expressly limited its discussion to the question of protecting LPFM from interference from encroaching full-service stations, holding that LPFM stations must cease operations if the LPFM station cannot demonstrate that interference is unlikely to occur regarding subsequently authorized [full-service] new stations, facility modifications and upgrades. *Second Order*, ¶ 37. (emphasis added.) Moreover, given the nature of comments sought in the *Second Order* for such subsequently authorized full-service stations, it should be clear that the Commission did not envision short-spacing to existing full-service stations as now

proposed. The Commission stated:

We seek comment on whether to amend Section 73.809. Should an LPFM station be permitted to continue to operate even when interference is predicted to occur within the 70 dBu contour of an “encroaching” second- or third-adjacent channel full service station? Should an LPFM station be permitted to remain on the air if the area of predicted interference does not receive service from the full service station prior to the grant of a construction permit for a new station or facilities modification of an existing station? Should the LPFM station be permitted to remain on the air if the full service station’s community of license would not be subject to predicted interference? It is always the case that an “encroachment” issue involves the licensing of a subsequently filed full service station application. As such, would an amendment to Section 73.809 be consistent with Congress’s directive barring the reduction of third-adjacent channel distance separations for “low-power FM radio stations”?

Second Order, ¶ 37. (footnote omitted.) (emphasis added.)

10. While WNOX appreciates the Commission’s desire to promote low power FM where feasible, full-service FM licensees such as WNOX must be vigilant in protecting against interference to their signals so that their listeners continue to benefit from their service. Low power FM operation on WNOX’s second-adjacent channel would establish a dangerous precedent undermining the integrity of the Commission’s entire allotment scheme. For these reasons, WNOX submits that any action by the Commission granting “protection” for low power FM stations should be limited to subsequently filed full-service FM applications.

DATED this 7th day of April, 2008.

Respectfully submitted,

OAK RIDGE, FM, INC.

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